



UNITED FISHERMEN OF ALASKA

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Country of Origin Labeling Program
Room 2092-S
Agricultural Marketing Service
USDA Stop 0249
1400 Independence Ave SW
Washington DC 20250-0249

RE: Docket No. LS-03-04 - Country of Origin Interim Final Rule

United Fishermen of Alaska represents 31 Alaska commercial fishing groups and hundreds of independent Alaska commercial fishermen. We offer the following comments on the USDA Country of Origin Interim Final Rule.

United Fishermen of Alaska feels that the Interim Final Rule falls far short of the intent of Congress and public comments in providing Country of Origin and Wild/Farmed labeling for fish and shellfish.

According to the Federal Register Notice, "the majority of the comments received were from consumers expressing support for the requirement to label the method of production of fish and shellfish as either wild and/or farm-raised..." We appreciate that USDA has included method of production (wild or farmed) in the rule to attempt to meet this request, but we feel the rule falls far short of consumer's desires in the amount of seafood to be covered.

Since USDA has no flexibility in allowing a larger proportion of seafood retailers to be covered because of this definition, we recommend that the USDA seek to cover a higher proportion of seafood by including canned, cooked, smoked and cured fish and shellfish.

USDA may have had no flexibility in the definition of retailers covered by the rule, as defined under the Perishable Agricultural Commodities Act (PACA). However, a rule that covers only retailers of fruit and vegetables, representing only an estimated 25% of fresh and frozen shellfish and 38% of fresh and frozen fish does not meet the desires that the majority of comments expressed.

In 2003, approximately 43 million pounds of the U.S. salmon harvest were sold fresh or frozen and 188 million lbs were canned - so 81% of U.S. salmon production is not expected to be covered. With only 38% of the 43 million pounds of fresh and frozen salmon expected to be covered, it appears that only approximately 7% of U.S. salmon production will be covered by Country of Origin and Wild/Farmed labeling requirements. (Source - National Marine Fisheries Service:

http://www.st.nmfs.gov/st1/fus/fus03/05_process2003.pdf) UFA requests that the final rule include canned, smoked and cured salmon to best meet the intent of Congress and the public.

The COOL interim rule does not include coverage of cooked king crab. Almost all king crab sold in the world market is cooked, and most of that product is then frozen and boxed. UFA requests that the final rule include cooked king crab.

In the interests of satisfying the majority of comments, we suggest that USDA include all seafood products where the seafood item is equal to or greater than 50 percent of the weight or volume of the product.

Infeasibility in labeling a particular product should be addressed through specific exemption rather than exemption of the whole class of canned or cooked fish and shellfish.

If there are specific products or species where an international fishery makes labeling unfeasible, for instance canned tuna, USDA might consider a specific exemption.

The USDA's lax promulgation of the intention of the congress in COOL will help promote negligent international fishery practices.

A recent news story about juvenile red king crab from Russia being sold at a major retail supermarket chain brings up the importance of the COOL rule covering cooked seafood.

We believe that the harvest of this crab was in violation of Russia's fisheries regulations, but lax enforcement allowed this product to make its way into the U.S. market. Fishery practices that allow harvest of juveniles cannot be sustainable.

COOL is not a trade protectionism issue, it is a consumer awareness and a resource protection issue.

The U.S. Commission on Ocean Policy report heralds Alaska as a good example of fisheries stewardship, but this stewardship costs money. Consumers need to be provided with COOL and wild/farmed information on all seafood to be able to make an informed decision in the marketplace to support responsible ocean resources policy. UFA believes that it is the intention of Congress, the majority of public opinion, and the U.S. President to support responsible oceans resource policy and requests that the USDA correct inadequacies in the interim final rule to provide COOL and wild/farmed labeling on the majority of fish and shellfish products.

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We are aware of arguments claiming that the Commerce clause preempts State country of origin labeling laws where those laws are for the purpose of restricting trade in favor of local producers, but we feel that the above example is an illustration of the necessity of country of origin labeling to provide the necessary information for consumers to have the choice of supporting responsible fisheries management practices, for protection of US and worldwide ocean resources.

Without adequate COOL at the national level, retailers and producers are likely to suffer from a myriad of individual state laws.

The rule does not supersede labeling laws for non-covered commodities by individual States, and we feel that a federal rule that covers so little of seafood production invites States to enact their own Country of origin and wild/farmed labeling laws to cover the many categories of seafood not currently covered. This would result in confusion and inefficiency to retailers and producers attempting to meet a myriad of individual state requirements.

The Alaska State Legislature passed CSSB 282 (RES) in 2004, which states that farmed halibut, salmon, and sablefish are mislabeled "unless the product is labeled identify the product as farmed fish raised outside the state," with no exemption for cooked or canned seafood. This was not included in the discussion of preemption as it is not a country of origin labeling law per se, but is indicative of the kind of regulations that individual states are likely to pursue in the absence of COOL. The fact that the majority of public comments on the proposed rule expressed support for the requirement to label the method of production of fish and shellfish as either wild and/or farm-raised, show that this is not merely protectionism, but information that consumers seek.

Legibility needs to be more specifically defined.

UFA feels that the term "legibly" is unnecessarily vague in the Interim Final Rule. We have read with some difficulty the voluntary labeling on Bumble Bee canned salmon as "Product of Thailand", in letters measuring 1/16" of an inch high. We recommend that this size of text be established as a minimum size to adequately define "legibly".

The COOL commentary posted in the Federal Register should not be promoting misinformation about the availability of Alaska wild salmon.

On page 59717 of the COOL Federal Register notice in the discussion of "responsibility of retailers", and "reasonable knowledge," we were surprised to read that "a retailer that receives fresh wild salmon from Alaska in January should have known that such a declaration was inaccurate."

This erroneous statement should be corrected, as Alaska wild salmon is harvested and delivered fresh to market in every month of the year.

Fines need not be so excessive as to drive retailers out of business.

UFA considers the fine of "not more than \$10,000" per violation to be a punitive level that would be imposed in extreme cases of willful or repeated misrepresentation, and that a fine of \$1000 per violation is acceptable to act as encouragement to comply. The rule should clearly define "per violation" to be a single instance such as a batch or shipment, not each individual package within a pallet or case lot. When a retailer shows willful intent to deceive, or repeated pattern of violations, the higher fines are appropriate.

Recordkeeping should not require a guaranty beyond a business's chain of custody.

Under recordkeeping requirements, the rule should be clear that a guaranty provided by the immediate supplier is sufficient to document the place of origin and method of production of the fish or shellfish.

USDA should work with FDA and homeland Security to provide an integrated solution of recordkeeping and food tracking requirements that works for retailers and producers.

UFA recommends that USDA work with the Food and Drug Administration and plan to revisit these regulations during the promulgation of FDA food safety regulations, especially regarding the recordkeeping, to allow an economical and practical system for retailers to provide labeling for consumers and tracking for the security of our food supply.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Vinsell", with a stylized flourish at the end.

Mark D. Vinsell
Executive Director